# HANDBOOK

# ON THE

# CIVIL INSTITUTIONALIZATION OF THE

# DEVELOPMENTALLY DISABLED


**JOHN M. HOLCOMB, JUDGE**

**BUTLER COUNTY PROBATE COURT**

**BUTLER COUNTY, OHIO**


**Ohio Revised Code Chapter 5123**

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**Ohio Revised Code Chapter 5123**

## 1. OVERALL GOVERNING STATUTE

1.1. Ohio Revised Code Chapter 5123 Department of Mental Retardation and Developmental Disabilities

1.2. Definition of "Mentally Retarded Person"

1.2.1. "Mentally retarded person" means a person having significantly sub average general intellectual functioning existing concurrently with deficiencies in adaptive behavior manifested during the developmental period. R.C. §5123.01(O)

1.3. Definition of "Mentally Retarded Person Subject To Institutionalization By Court Order"

1.3.1. "Mentally retarded person subject to institutionalization by court order" means a person eighteen years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist:

1.3.1.1 The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

1.3.1.2 The person needs and is susceptible to significant habilitation in an institution. R.C. §5123.01(P)

1.3.2 A determination of "moderate mental retardation" requires two findings, following a comprehensive evaluation:

1.3.2.1 That the person is *impaired in adaptive behavior* to a moderate degree; and

1.3.2.2 That the person is functioning at the *moderate level of intellectual functioning*. In re Elmore, 83 Ohio App. 3d. 348, 614 N.E.2d 1116 (1992)

1.3.2.2.1 "Intellectual functioning" requires an evaluation of actual intellectual functioning which is not determined by test scores, but instead is determined by the court predicated upon test scores, expert testimony, and other pertinent evidence. In re Elmore, 13 Ohio App. 3d 79, 13 OBR 93, 468 N.E. 2d 97 (1983).

## 2. SHORT-TERM CARE

2.1. Purpose of Short-Term Care

2.1.1. Short-term care is provided in a developmental center to meet the family's or caretaker's needs for separation from the person with mental retardation. R.C. §5123.701(B)

2.2. Written Application for Short Term Care

2.2.1. Any person, other than a person found not guilty by reason of insanity, in the community who is eighteen years of age or older and who is or believes self to be mentally retarded may make written application to the managing officer of any institution for temporary admission for short-term care. The application may be made on behalf of a minor by a parent or guardian, and on behalf of an adult adjudicated mentally incompetent by a guardian. R.C. §5123.701(A).

2.3. Length of Short-term Care Stay

2.3.1. Short-term care shall be defined as appropriate services provided to a person with mental retardation for no more than 14 consecutive days and for no more than 42 days in a fiscal year. The 14 day period may be extended at the discretion of the managing officer of an institution. R.C. §5123.701(B).

2.3.2. At the conclusion of each period of short-term care, the person shall return to the person's family or caretaker. Under no circumstances shall a person admitted for short-term care remain in the institution unless the person is admitted according to sections 5123.70, sections 5123.71 to 5123.76, or section 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402. See R.C. §5123.701(G)

2.4. Location of Short-term Care

2.4.1. Short-term care is provided in a state developmental center. R.C. §5123.701(B)

2.5. Requirements for Admission to an Institution

2.5.1. The managing officer of an institution, with the concurrence of the chief program director, may admit a person for short-term care only after a medical examination has been made of the person and only if the managing officer concludes that the person is mentally retarded. R.C. §5123.701(C)

2.6. Petition to Probate Court By Legal Rights Service

2.6.1. If the application for admission of a minor or of a person adjudicated mentally incompetent is made by the minor's parent or guardian or by the incompetent's guardian, and the minor or incompetent is admitted for short-term care, the probate court shall determine, upon petition by the legal rights service, whether the admission is in the best interest of the minor or incompetent. R.C. §5123.701(D)

2.7. Exception for Persons Not Guilty By Reason of Insanity

2.7.1. A person who is found not guilty by reason of insanity shall not admit himself or herself to an institution for short-term care unless a hearing was held regarding the person pursuant to R. C. §2945.40(A) and the person was found at the hearing to be either a:

2.7.1.1 mentally retarded person subject to institutionalization by court order; or a

2.7.1.2 mentally retarded person subject to institutionalization by court order, was involuntarily committed, and was finally discharged.

## 3. VOLUNTARY INSTITUTIONALIZATION – FOR PERSONS INITIALLY INVOLUNTARILY INSTITUTIONALIZED

3.1. Persons Who May Apply for Voluntary Admission

3.1.1. Except for persons found incompetent to stand trial or not guilty by reason of insanity, any person who has been involuntarily committed may apply at any time during the initial ninety-day period of the court order for voluntary admission to an institution to which the person was admitted. R.C. §5123.76(G)(1)

3.1.2. A person who is found incompetent to stand trial or not guilty by reason of insanity and who is committed shall not be voluntarily admitted to an institution until after the termination of the commitment as described in R.C. §2945.401(J). R.C. § 5123/69(E), 5123.76(G)(2)

3.2. Notice To The Court & Dismissal of Involuntary Case

3.2.1. Upon admission of a voluntary resident, the managing officer shall immediately notify the court, the respondent's counsel and the designee of the director in writing of the person's voluntary admission. Upon receipt of the notice, the court shall dismiss the case. R.C. §5123.76(G)(1)

## 4. INVOLUNTARY INSTITUTIONALIZATION – COMMENCEMENT OF PROCEEDINGS

4.1 Where to File the Affidavit

4.1.1 Proceedings for involuntary institutionalization shall be commenced by the filing of an affidavit with the probate court in the county where the person resides or where the person is institutionalized. R.C. §5123.71(A)(1)

4.2 Party Who Files the Affidavit

4.2.1 In cases not involving a finding of incompetent to stand trial or not guilty by reason of insanity, the affidavit may be filed only by a person who has custody of the individual as a parent, guardian, or service provider or by a person acting on behalf of the department or county board of MRDD. R.C. §5123.71(A)

4.2.2 In cases involving a finding of incompetent to stand trial the affidavit may be filed by the criminal trial court or the prosecutor. R.C. §2945.39(A)(1). See local protocol below.

4.2.3 For persons initially voluntarily institutionalized under R.C. §5123.69 and who request release, an affidavit may be filed by the managing officer of the institution with the probate court of the county where the resident has his or her residence or where he or she is institutionalized, within three court days from the receipt of the request for release. R.C.§5123.70(A)(2)

4.2.4 In the case of a person initially voluntarily institutionalized, the managing officer of the institution filing the affidavit may notify the probate court by telephone that the affidavit has been mailed by certified mail. The probate court will consider the affidavit filed as of the date of the telephone communication. R.C. 5123.70(A)(2)

4.2.5 The person filing the affidavit, pursuant to subsection 4.1.1 above, shall be subject to subpoena by either party. R.C. §5123.76(A)(7)

## 4.3 Local Protocol – Party Who Files the Affidavit When Respondent is Incompetent To Stand Trial & Distribution of the Affidavit

4.3.1 There are two statutes in the criminal code that address the party responsible for filing the affidavit in the probate court when a person is found incompetent to stand trial for an offense. R.C. §2945.39(A)(1) provides that the *trial court or the prosecutor* may file the affidavit in cases of persons incompetent to stand trial and R.C. §2934.38(B)(2) provides that the *trial court only* files the affidavit. The two statutes address violent and nonviolent offenders, respectively. Local protocol is that the trial court files the affidavit in both cases so there is consistency in the party serving as the affiant.

4.3.2 After the affidavit is filed by the trial court in the probate court, the probate court will distribute the affidavit to the Attorney General, and administrator of the local MRDD board.

4.4 Contents of the Affidavit

4.4.1. The affidavit shall be filed in the manner and form prescribed by the department of MRDD. R.C. §5123.71(A)(1)

4.4.2. The affidavit shall be filed either on information or actual knowledge, whichever is determined to be proper by the court. R.C. §5123.71(A)(1)

4.4.3. The affidavit shall contain an allegation setting forth that either:

4.4.3.1 The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community; or

4.4.3.2 The person needs and is susceptible to significant habilitation in an institution. R.C. §§5123.01(P)(1) & (2), 5123.71(A)(1)

4.4.4. The affidavit shall contain a statement of the factual ground for the belief that the person is a mentally retarded person subject to institutionalization by court order. §5123.71(A)(1)

4.4.5 The affidavit shall be accompanied by both of the following: 1.) a comprehensive evaluation report prepared by the members of the team and 2.) an assessment report prepared by the county board of MRDD specifying that the individual is in need of services on an emergency or priority basis. R.C. §5123.71(A)(1)(a)(b). See local protocol below.

4.4.6 Affidavit may be accompanied by a written and sworn statement that the person or guardian of a person adjudicated incompetent has refused to allow a comprehensive evaluation and county board assessment reports. R.C. §5123.71(2)

## 4.5 Local Protocol – Assessment Report Accompanies the Affidavit, Comprehensive Evaluation Does Not

4.5.1 R.C. §5123.71(A)(1)(a) requires that a comprehensive evaluation report, prepared by the person's evaluation team, accompany the affidavit. Under local protocol, the comprehensive evaluation report does not accompany the affidavit. The comprehensive evaluation is entered into evidence at the full hearing.

4.6 Contents of the Assessment Report

4.6.1 Prior to filing an affidavit for involuntary institutionalization, a person who is eligible to file shall request that the county board of MRDD conduct an assessment of the individual's needs. R.C. §5123.711(B). Under local protocol, State of Ohio form DMR 1234 is used to prepare the Assessment Report.

4.6.2 The board's assessment of an individual's needs shall include the following:

4.6.2.1 A determination of the current needs of the individual, including an appropriate plan for services;

4.6.2.2 A determination of whether the community is the least restrictive environment in which the individual may be appropriately served;

4.6.2.3 A determination of whether the individual meets the conditions for assistance on an emergency or priority basis;

4.6.2.4 Identification of available resources to meet the individual's needs, including service providers, with the capability of appropriately meeting those needs, special ancillary services, and moneys to pay for the services necessary to meet the individual's needs within the community rather than in a state institution. R.C. §5123.711(C)(1)-(4).

4.7 Assessment Report Notice Requirements

4.7.1 Not later than 30 days after the date a request is received, the board shall complete the assessment and provide the person who has filed or intends to file the affidavit a report of its findings and recommendations. The report shall be delivered by certified mail. R.C. §5123.711(B)

4.7.2 A written report of the assessment shall be filed with the court. If counsel for the person who is evaluated or assessed is known, the court shall send to the counsel a copy of the report as soon as possible after it is filed and prior to the probable cause or full hearing. R.C. §5123.71(A)(2)

4.7.3 Within 3 working days of receiving a request for an assessment, the board shall notify the department of MRDD that the request has been made and that there is the potential for court-ordered institutionalization of an individual. The department may provide

assistance to the board in the performance of the assessment. R.C. §5123.711(B)

## 5. EMERGENCY INSTITUTIONALIZATION

5.1 Temporary Order of Detention / Court Order to Provide Services / Court Hearing

5.1.1 On receipt of an affidavit, the probate division of the court of common pleas may, if it has probable cause to believe that the person named in the affidavit is a mentally retarded person subject to institutionalization by court order, and that emergency institutionalization is required, issue a temporary order of detention or order the county board of MRDD to provide services to the individual in the community, if the board's assessment of the individual identifies that resources are available to meet the individual's needs in an appropriate manner within the community, as an alternative to institutionalization, or set the matter for further hearing R.C. §5123.74(A)(1)

5.2 Parties Who May Take a Person Into Custody

5.2.1 Any health or police officer or sheriff may take a person named in an affidavit into custody and transport the person if the court has issued a temporary order of detention. R.C. §5123.74(A)(1)

5.3 Detention Facilities

5.3.1 A person may be transported to an institution or to the person's home, a certified foster home, licensed rest or nursing home, a county home or a facility used for detention, but the person shall be kept separate from persons charged with or convicted of penal offenses. R.C. §5123.77. See local protocol.

5.4 Notice of Institutionalization

5.4.1 The person in charge of the institution or facility in which the person is temporarily held immediately shall notify that person's legal guardian, spouse, or next of kin and the person's counsel, if such can be ascertained. R.C. §5123.77(B)

### 5.5 Local Protocol – Court Order for Temporary Detention

5.5.1 Under local protocol, the court order for temporary detention shall contain a statement putting the person in charge of the

institution or the facility in which the person is temporarily held on notice of the statutory requirement that the person's legal guardian, spouse or next of kin and the person's counsel be notified, pursuant to R.C. §5123.77(B).

## 6. PROBABLE CAUSE HEARING

6.1 Purpose of Hearing

6.1.1 A person who is involuntarily placed in an institution or other place, on an emergency basis or with respect to whom proceedings have been instituted as the result of the filing of an affidavit, shall be afforded a hearing to determine whether there is probable cause to believe that the person is a mentally retarded person subject to institutionalization by court order. R.C. §5123.75

6.2 Party Who Files a Motion Requesting a Probable Cause Hearing

6.2.1 The probable cause hearing shall be held on the request of the person, his guardian, the person's counsel, or upon the court's own motion. A probable cause hearing is conducted according to the same requirements as a full hearing. R.C. §§5123.71(B)(3); 5123.75

### 6.3 Local Protocol – Party Presenting Evidence at the Probable Cause Hearing

6.3.1 R.C. §5123.75(C) states that the designee of the director shall present evidence for the state. Under local protocol the Attorney General presents the assessment prepared by the county board at the probable cause hearing.

### 6.4 Local Protocol – Assessment Report Available at the Probable Cause Hearing / Comprehensive Evaluation Available at the Full Hearing

6.4.1 R.C. §5123.71(A)(2) states that the evaluation and assessment must be completed before a probable cause hearing or full hearing may be under R.C. §5123.75 or §5123.76, respectively. Under local protocol, only the assessment report must accompany the affidavit and be completed before the probable cause hearing. The comprehensive evaluation must be available at the time of the full hearing.

6.5 Timing of Probable Cause Hearing

6.5.1 The probable cause hearing shall be conducted within two court days from the day on which the request is made. R.C. §5123.75(A)

6.5.2 Failure to conduct the probable cause hearing within this time limit shall effect an immediate discharge of the person. If the proceedings are not reinstituted within thirty days, records of the proceedings shall be expunged. R.C. §5123.75(A)

6.5.3 On motion of the person or his counsel and for good cause shown, the court may order a continuance of the hearing. R.C. §5123.75(E)

6.6 Rights of an Involuntarily Detained Person

6.6.1 Any person who is involuntarily detained in an institution or otherwise is in custody pursuant to Chapter 5123, shall be informed of the right to:

6.6.1.1 Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, physician, or both, to contact any other person or persons to secure representation by counsel, or to obtain medical assistance, and be provided assistance in making calls if the assistance is needed and requested;

6.6.1.2 Retain counsel and have independent expert evaluation and, if the person is an indigent person, be represented by court-appointed counsel and have independent expert evaluation at court expense;

6.6.1.3 Upon request, have a hearing to determine whether there is probable cause to believe that the person is a mentally retarded person subject to institutionalization by court order. R.C. §5123.71(B)(1)-(3), 5123.75(B)

6.7 Outcome of Probable Cause Hearing

6.7.1 Not A Mentally Retarded Person Subject To Institutionalization By Court Order

If the court does not find probable cause to believe that the respondent is a mentally retarded person subject to institutionalization by court order, it shall order immediate release of the person and dismiss and expunge all record of the proceedings. R.C. §5123.75(D)

6.7.2 Mentally Retarded Person Subject To Institutionalization By Court Order

If the court finds probable cause to believe that the person is a mentally retarded person subject to institutionalization by court order, the court shall order a full hearing and may issue two additional orders:

6.7.2.1 an interim order of placement and transport the person to a facility where a comprehensive evaluation may be done; and

6.7.2.2 an order for the comprehensive evaluation to be performed by the staff at the facility. R.C. §§ 5123.71(A)(2); 5123.75(F); In re Elmore, 13 Ohio App. 3d 79, 13 OBR 93, 468 N.E. 2d 97 (1983)

6.8 Notice of Probable Cause Hearing

6.8.1 After receipt of the affidavit, the court shall cause written notice, by mail or otherwise, of any hearing the court directs, to be given to all of the following persons:

6.8.1.1 respondent;
6.8.1.2 respondent's legal guardian, if any;
6.8.1.3 respondent's spouse, if address is known;
6.8.1.4 person who filed the affidavit;
6.8.1.5 any one person designated by respondent; if none, then to adult next of kin other than the person who filed the affidavit, if that person's address is known to the court;
6.8.1.6 respondent's counsel;
6.8.1.7 director or designee of the director of MRDD. R.C. §5123.73(A).

6.8.2 Any person entitled to receive notice may waive the notice. R.C. §5123.73(B)

6.8.3 A copy of the affidavit and temporary order of detention or interim order of placement shall be served with the notice to all parties. R.C. §5123.73(C)

6.9 Parties Who May Take a Person Into Custody

6.9.1 The parties who may take a person into custody after a probable cause hearing and the facilities at which the person may be detained are the same as those listed under "Emergency Institutionalization."

## 6.10 Local Protocol – Detention Facilities and Completion of the Comprehensive Evaluation

6.10.1 Although the court order stating the least restrictive setting comes after the presentation of evidence at the full hearing, practically speaking, at the time of the filing of the affidavit or soon after, a determination will be made by the county board as to what residential environment may provide the best setting given the services required by the respondent.

6.10.2 For persons who may be placed in a state developmental center, the court will order temporary detention or an interim order of placement in the state developmental center so the comprehensive evaluation may be performed there.

6.10.3 For persons who may be placed at facilities other than a state developmental center, the county board will make a determination as to what tests need to be completed, in order to comply with the statute, and where they should be done. The court will order the respondent to that facility via an interim order of placement or a temporary order of detention.

# 7 FULL HEARING

7.1 Party Who May Conduct A Full Hearing

7.1.1 The hearing shall be held by a judge of the probate division or, upon transfer by the judge of the probate divisions, by another judge or the court of common pleas, or a magistrate designated by the judge of the probate division. Any magistrate designated by the judge of the probate division must be an attorney. R.C. §5123.76(A)

7.2 Timing of Full Hearing

7.2.1 A full hearing shall be held as soon as possible within ten days from the probable cause hearing. R.C. §5123.75(F)

7.2.2 A person, or his or her counsel after obtaining consent of the person, may waive the full hearing. R.C. §5123.75(F)

7.2.3 A waiver of the full hearing, after the probable cause hearing, shall not preclude the respondent from asserting his or her right to a full hearing at any time prior to the expiration of the first ninety-day commitment period. R.C.§5123.75(F)

7.2.4 On motion of the respondent or the respondent's counsel for good cause shown, or upon the court's own motion, the court may order a continuance of the hearing. R.C. §5123.76(A)(13)

7.3 Counsel For the Respondent and Due Process Rights

7.3.1 The following shall be made available to the counsel for the person:

7.3.1.1 all relevant documents, information and evidence in the custody or control of the state or prosecutor;

7.3.1.2 all relevant documents, information, and evidence in the custody or control of the institution, facility, or program in which the respondent currently is held or in which the respondent has been held pursuant to full hearing proceedings;

7.3.1.3 with the consent of the respondent, all relevant documents, information, and evidence in the custody or control of any institution or person other than the state. R.C.§5123.76(A)(1)(a)-(c).

7.3.2 The respondent has the right to be represented by counsel of the respondent's choice and has the right to attend the hearing except if unusual circumstances of compelling medical necessity exists that renders the respondent unable to attend the respondent has not expressed a desire to attend. R.C. §5123.76(A)(2)

7.3.3 If the respondent is not represented by counsel and the court determines that the respondent's absence from the hearing is justified, and the right to counsel has not been validly waived, the court shall appoint counsel to represent the respondent at the hearing. R.C. §5123.76(A)(3)

7.3.4 The court may tax costs of appointed counsel to the respondent unless it is shown that the respondent is indigent. R.C. §5123.76(A)(3)

7.3.5 If the court appoints counsel, or if the court determines that the evidence relevant to the respondent's absence does not justify the absence, the court shall continue the case. R.C. §5123.76(A)(3)

7.3.6 The respondent shall be informed of the right to retain counsel, to have independent expert evaluation, and, if an indigent person, to be represented by court appointed counsel and have expert

independent evaluation at court expense. R.C. §5123.76(A)(4)

7.3.7 The hearing may be closed to the public unless counsel for the respondent requests that the hearing be open to the public. R.C. §5123.76(A)(5)

7.3.8 The court may admit, for good cause shown, persons having a legitimate interest in the proceedings, unless objected to by the respondent, the respondent's counsel, the designee of the director of MRDD. R.C. §5123.76(A)(6)

7.3.9 The court shall examine the sufficiency of all documents filed and shall inform the person, if present, and the person's counsel, of the nature of the content of the documents and the reason for which the person is being held or for which the person's placement is being sought. R.C. §5123.76(A)(8)

7.3.10 The court shall make and maintain a full transcript and record of the proceedings.

7.3.11 The respondent has the right to testify and the respondent or the respondent's counsel has the right to subpoena witnesses and documents and to present and cross-examine witnesses. R.C. §5123.76(A)(11)

7.3.12 The respondent shall not be compelled to testify and shall be so advised by the court. R.C. §5123.76(A)(12)

7.3.13 The Rules of Civil Procedure apply to the full hearing. R.C. §5123.76(A)(14)

7.4 Party Who Presents Evidence at the Full Hearing

7.4.1 The designee of the director shall present the evidence for the state. R.C. §5123.76(A)(10). See local protocol.

7.4.2 The attorney general shall present the comprehensive evaluation, assessment, diagnosis, prognosis, record of habilitation and care, if any, and less restrictive habilitation plans, if any. R.C. §5123.76(A)(10). See local protocol.

7.4.3 The presentation responsibility of the attorney general does not apply in connection with a person found not guilty by reason of insanity and subject to a hearing under R.C. §2945.40. R.C. §5123.76(A)(10)

## 7.5 Local Protocol – Party Presenting Evidence at the Full Hearing

7.5.1 In all cases, regardless of the least restrictive setting being recommended to the court, the attorney general shall present the comprehensive evaluation, assessment, diagnosis, prognosis, record of habilitation and care, if any, during the full hearing.

7.6 Contents of the Comprehensive Evaluation – R.C. §5123.01(C)

7.6.1 "Comprehensive Evaluation" means a study, including a sequence of observations and examinations, of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and management of persons with mental retardation or a developmental disability. R.C. §5123.01(C)

7.6.2 The group of persons making the conclusions and recommendations shall include individuals who are professionally qualified in the fields of medicine, psychology, and social work, together with such other specialists as the individual case may require. R.C. §5123.01(C)

7.6.3 The comprehensive evaluation shall include a summary of the person's deficits in adaptive behavior and intellectual functioning determined in accordance with standard measurements. R.C. §5123.01(Q)

7.6.4 The comprehensive evaluation shall include a statement by the members of the team certifying that they have performed a comprehensive evaluation of the person and that they are of the opinion that the person is a mentally retarded person subject to institutionalization by court order. R.C. §5123.71(A)(1)(a)

7.7 Definition of the Separate Mental Retardation Evaluation – R.C. §2945.371

7.7.1 The "separate mental retardation evaluation" (SMRE) performed to assess competency to stand trial or if a plea of not guilty by reason of insanity is entered in a criminal matter, and the "comprehensive evaluation" performed pursuant to civil commitment are not the same evaluations. R.C. § 2945.371(G) & (H) state the information required in a SMRE and R.C. §

5123.01(C) sets forth the definition of the comprehensive evaluation.

## 7.8 Local Protocol – Performance of the Separate Mental Retardation Evaluation

7.8.1 For cases originating in Butler County, Dr. Brian Wood of the Montgomery Developmental Center is the psychologist designated to perform the SMRE. Information to be sent to Dr. Wood should be mailed to Vicki Jenkins, Associate General Counsel, Ohio Department of Mental Retardation and Developmental Disabilities, 1810 Sullivant Avenue, Columbus, OH 43223-1239 or sent via facsimile to (614)752-8551.

7.9 Respondent's Testimony

7.9.1 The respondent has the right to testify and the respondent or the respondent's counsel has the right to subpoena witnesses and documents and to present and cross-examine witnesses. R.C. §5123.76(A)(11)

7.9.2 The respondent shall not be compelled to testify and shall be so advised by the court. R.C. §5123.76(A)(12)

7.10 Notice of Full Hearing

7.10.1 Notice requirements are identical to those listed above for the probable cause hearing. R.C. §5123.73

7.11 Outcome of Full Hearing

7.11.1 Not A Mentally Retarded Person Subject to Institutionalization by Court Order

Unless, upon completion of the hearing, the court finds by clear and convincing evidence that the person is a mentally retarded person subject to institutionalization by court order, the court shall order the person's immediate discharge. R.C. §5123.76(B)

7.11.2 Mentally Retarded Person Subject to Institutionalization by Court Order

If, upon completion of the hearing, the court finds by clear and convincing evidence, that the person is a mentally retarded person subject to institutionalization by court order, the court may order the

person, for no more than 90 days to a:

7.11.2.1 public institution, provided that the commitment will not cause the institution to exceed its licensed capacity determined in accordance with R.C. §5123.19 and provided that such placement is indicated by the comprehensive evaluation report filed pursuant to R.C. §5123.71;

7.11.2.2 private institution;

7.11.2.3 county mental retardation program;

7.11.2.4 private plan of habilitation and care; or to

7.11.2.5 any other suitable facility, program, or the care of any person consistent with the comprehensive evaluation, assessment, diagnosis, prognosis, and habilitation needs of the person. R.C. §5123.76(C)(1) – (5)

7.11.3 Any order committing a person to a private institution, to private habilitation and care or to any other suitable facility or program or person shall be conditional upon the receipt by the court of consent by the facility, program or person to accept the person committed. R.C. §5123.76(D)

7.11.4 The court shall consider comprehensive evaluation, assessment, diagnosis and projected habilitation plan for the person, and shall order the implementation of the least restrictive alternative available and consistent with habilitation goals. R.C. §5123.76(E)

7.11.5 If not otherwise furnished, the probate judge shall see that each patient hospitalized under R.C. §5123.76 is properly attired for transportation, and in addition, the institution shall be furnished a complete change of clothing for such patient, which shall be paid for on the certificate of the probate judge and the order of the county auditor from the county treasury. The clothing shall be new or as good as new. R.C. §5123.39

7.11.6 The probate judge, upon making an order institutionalizing a person under Chapter 5123, shall transmit copies, under his or her official seal of court papers in the case, including the certificate of the expert witnesses, and of his or her findings in the case to the managing officer of the institution for the mentally retarded. R.C. §5123.95. See local protocol.

## 7.12 Local Protocol – Probate Court Documents Transmitted to an Institution

7.12.1 Under local protocol, "court papers" as referred to in R.C. §5123.95 means the affidavit, comprehensive evaluation, assessment report, the court's decision and entry and all orders of detention.

7.13 Length and Place of Temporary Detention

7.13.1 Pending removal to an institution, a person taken into custody or ordered to be institutionalized may be held in the person's home, a certified foster home, licensed rest or nursing home, a county home, or a facility used for detention, but the persons shall be kept separate from persons charged with or convicted of penal offenses. R.C. §5123.77(A)

7.14 Notice of Institutionalization

7.14.1 The person in charge of the institution or facility in which the person is temporarily held immediately shall notify that person's legal guardian, spouse, or next of kin and the person's counsel, if such can be ascertained. R.C. §5123.77(B)

## 7.15 Local Protocol – Court Order for Temporary Detention

7.15.1 The court order for temporary detention shall contain a statement putting the person in charge of the institution of the facility in which the person is temporarily held on notice of the statutory requirement that the person's legal guardian, spouse or next of kin and the person's counsel be notified, pursuant to R.C. §5123.77(B).

# 8 TRANSFER TO ANOTHER RESIDENTIAL LOCATION

8.1 Transfer Among Facilities

8.1.1 If the director of MRDD determines that it would be consistent with the habilitation needs of the resident to do so, the director may transfer an involuntary resident, or a consenting voluntary resident, from one public institution to another or to an institution other than a public institution or other facility. R.C. §5123.21

8.1.2 The director of MRDD shall give written notice of the transfer to the resident's:

8.1.2.1 legal guardian;
8.1.2.2 parents;
8.1.2.3 spouse;
8.1.2.4 counsel;
8.1.2.5 nearest known relative or friend if 1. – 4. above are unknown R.C.§5123.21

8.1.3 Whenever a consenting voluntary resident is transferred the notification shall be given only at the resident's request. R.C. §5123.21

8.2 Transfer to Less Restrictive Setting

8.2.1 If any time, it is determined by the director of the facility or program to which, or the person to whom, the respondent is committed that the respondent could be equally well habilitated in a less restrictive environment that is available, the following shall occur:

8.2.1.1 The respondent shall be released by the director of the facility or program or by the person forthwith and referred to the court together with a report of the findings and recommendations of the facility, program, or person. R.C. §5123.76 (F)(1);

8.2.1.2 The director of the facility or program or the person shall notify the respondent's counsel and the designee of the director of MRDD. R.C. §5123.76(F)(2)

8.2.1.3 The court shall dismiss the case or order placement in the less restrictive environment. R.C. §5123.76(F)(3)

## 8.3 Local Protocol – Court Hearing Mandatory When a Respondent is Transferred Among Facilities or To a Less Restrictive Environment

8.3.1 Because the local court orders are to a specific developmental center, if a respondent is transferred to another developmental center or to a less restrictive setting, the court order will no longer be in effect. So that the case is not automatically dismissed, when the attorney general wishes the civil commitment to continue, the matter must be set for hearing before the respondent is transferred so that another court order may be made.

8.4 Transfer to More Restrictive Setting

8.4.1 Before an involuntary resident may be transferred to a more restrictive setting, the managing officer of the institution shall file a motion with the court requesting the court to amend its order of placement issued under R.C. §5123.76. R.C. §5123.21

8.4.2 At the resident's request, the court shall hold a hearing on the motion at which the resident as the same rights as at a full hearing under R.C. §5123.76. R.C. §5123.21

8.4.3 The director of MRDD shall given written notice of the transfer to the resident's:

8.4.3.1 legal guardian;
8.4.3.2 parents;
8.4.3.3 spouse;
8.4.3.4 counsel;
8.4.3.5 nearest known relative or friend if 1. – 4. above are unknown. R.C. §5123.21

## 9 CONTINUED COMMITMENT

9.1 Party Filing the Application for Continued Commitment

9.1.1 If, at the end of any commitment period, the respondent has not already been discharged or has not requested voluntary admission status, the director of the facility or program, or the person to whose care the respondent has been committed, shall discharge the respondent, unless at least ten days before the expiration of the commitment period, the designee of the director or the prosecutor files an application with the court requesting continued commitment. R.C. §5123.76(H)

### 9.2 Local Protocol – Party Filing the Application for Continued Commitment

9.2.1 R.C. §5123.76(H) states that the designee of the director or the prosecutor files an application with the court requesting continued commitment. Under local protocol, the assistant attorney general files the application with the court where a person is in the care of the county MRDD board and not a resident of a state institution.

9.2.2 In cases involving persons residing at state institutions, the superintendent of the developmental center files the application with the court.

9.3 Contents of the Application For Continued Commitment

9.3.1 The application shall include a written report containing a current comprehensive evaluation and assessment, a diagnosis, a prognosis, an account of progress and past habilitation, and a description of alternative habilitation settings and plans, including a habilitation setting that is the least restrictive setting consistent with the need for habilitation. R.C. §5123.76(H)(1). See local protocol.

## 9.4 Local Protocol – "Updated" Comprehensive Evaluation and Assessment Reports

9.4.1 The comprehensive evaluation, filed with the application for continued commitment, shall be either the original prepared for the full hearing, an "updated" evaluation, or a completely new comprehensive evaluation depending how much time has elapsed from the initial full hearing.

9.4.2 R.C. §5123.76 provides that an application for continued commitment include a written report containing a current comprehensive evaluation. The comprehensive evaluation contains three parts:

9.4.2.1 assessment of intellectual functioning;

9.4.2.2 deficits in adaptive behavior;

9.4.2.3 other psychological or social functioning information of assistance to the court.

9.4.3 At the first 90 day hearing, the comprehensive evaluation does not need to be updated.

9.4.4 Under local protocol, at any 180 day hearings, other than the hearing held two years from the initial commitment, an "updated" comprehensive evaluation is to be submitted with the application for continued commitment.

9.4.5 Under local protocol, an "updated" comprehensive evaluation is defined as one that includes the original assessment of intellectual functioning but an update of adaptive behavior measures and updated reports from any psychological or other medical specialists associated with the case.

9.4.6 At the time of the mandatory hearing 2 years from the date of the initial commitment, the entire comprehensive evaluation must be redone.

9.4.7 The assessment report contains four parts:

9.4.7.1 a determination of the current needs of the individual, including an appropriate plan for services;

9.4.7.2 a determination of whether the community is the least restrictive environment in which the individual may be appropriately served;

9.4.7.3 a determination of whether the individual meets the conditions for assistance on a emergency or priority basis; and

9.4.7.4 identification of available resources to meet the individual's needs, including service providers with the capability of appropriately meeting those needs, special ancillary services, and moneys to pay for the services necessary to meet the individual's needs within the community rather than in a state institution.

9.4.8 The assessment report submitted with the affidavit is a complete report containing all four parts.

9.4.9 At the first 90 day hearing, the assessment report does not need to be updated.

9.4.10 At any 180 day hearings, other than the hearing held two years from the initial commitment, an "updated" assessment report is to be submitted with the application for continued commitment.

9.4.11 Included in an "updated" assessment report are: 1.) a determination of the current needs of the individual, including an appropriate plan for services; and 2.) identification of available resources to meet the individual's needs, including service providers with the capability of appropriately meeting those needs, special ancillary services, and moneys to pay for the services necessary to meet the individual's needs within the community rather than in a state institution. R.C. §5123.711(C)(1)&(4).

9.4.12 At the time of the mandatory hearing 2 years from the date of the initial commitment, the entire assessment report must be redone.

9.5 Timing of Continued Commitment Hearings

9.5.1 A hearing on the first application for continued commitment shall be held at the expiration of the first 90 day period. The hearing shall be mandatory and may not be waived. §5123.76(H)(2)

9.5.2 Subsequent periods of commitment shall be for no more than 180 days. R.C. §5123.76(H)(3)

9.5.3 A mandatory hearing shall be held at least every two years after the initial commitment. R.C. §5123.76(H)(4).

9.6 Waiver of Continued Commitment Hearings

9.6.1 The first continued commitment hearing is mandatory and shall not be waived. R.C. §5123.76(H)(2)

9.6.2 Hearings on subsequent commitment periods, after the first 90-days, may be waived. However, a mandatory hearing shall be held at least every two years after the initial commitment and may not be waived. R.C. §§5123.76(H)(3) & (4)

## 9.7 Local Protocol – Mandatory Two Year Hearing Held at 21 Months After Adjudication

9.7.1 R.C. §§5123.76(H)(3) & (4) provide that a mandatory hearing be held at least every two years after the initial commitment and the hearing may not be waived. Under local protocol, this mandatory hearing is held 21 months after the initial commitment.

9.8 Length of Commitment & Court Orders

9.8.1 After the expiration of the first 90-day commitment period, subsequent periods of commitment may not exceed 180 days. R.C. §5123.76(H)(3)

9.8.2 No person who is found to be a mentally retarded person subject to institutionalization by court order, pursuant to R.C. §5123.01(P)(2), because he or she needs and is susceptible to significant habilitation in an institution shall be held under involuntary commitment for more than five years. R.C. §5123.76(I)

9.8.3 Persons found to be a mentally retarded person subject to institutionalization by court order, pursuant to R.C. §5123.01(P)(1),

because the person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community are not subject to any restrictions regarding the length of the involuntary commitment period.

9.8.4 If the court finds the respondent is a mentally retarded person subject to institutionalization by court order, after holding a hearing upon a request for continued commitment, the court may make the same types of orders as those the court made after a full hearing. R.C. §5123.76(H)(5)

## 10 REPORT ON LOCATION, DEATH OR CONDITION OF RESIDENT

10.1 Parties Receiving Reports

10.1.1 The managing officer of an institution under the control of the department of MRDD shall immediately report the removal, death, absence without leave, discharge, or trial visit of any resident, or return of an absent without leave or visiting resident to the department and to the probate judge of the county from which the resident was institutionalized, and the probate judge of the county of residence of the person. R.C. §5123.811

10.2 Report of the Condition of Resident

10.2.1 The managing officer of the institution shall, upon the request of the probate judge of the county from which such resident was institutionalized or the probate judge of the county of the residence of such resident, make a report to such judge of the condition of any resident under the care, treatment, custody, or control of such managing officer. R.C. §5123.811

## 11 DISCHARGE OF A PERSON INVOLUNTARILY INSTITUTIONALIZED

11.1 Application By Person

11.1.1 Upon the application of a person involuntarily committed, supported by an affidavit of a licensed physician alleging that the person is no longer a mentally retarded person subject to institutionalization by court order, the court for good cause shown may hold a full hearing on the person's continued commitment prior to the expiration of any subsequent period of commitment set by the court. R.C.

§5123.76(H)(3)

11.2 Discharge by Managing Officer

11.2.1 The managing officer of an institution, with the concurrence of the chief program director, shall grant a discharge without the consent or authorization of any court, upon a determination that institutionalization no longer is appropriate. R.C. §5123.79

11.2.2 Upon discharge, the managing officer of the institution shall notify the probate division of the court of common pleas that made the involuntary commitment. R.C. §5123.79

## 12 APPENDIX OF FORMS

| Form | Form Number | Handbook Section Reference |
|---|---|---|
| MR/DD Affidavit For Involuntary Commitment | BCPC Form 801R | 4.4 |
| State of Ohio County Board Assessment | DMR-1234 | 4.6 |
| Temporary Order of Detention | BCPC Form 800 | 5.1 |
| Entry Granting Motion for Continuance | BCPC Form 816 | 6.5, 7.2 |
| Rights of an Involuntarily Detained Person | BCPC Form 808 | 6.6 |
| Entry Determining Probable Cause and Ordering a Comprehensive Evaluation and Interim Order of Placement | BCPC Form PCH | 6.7 |
| Notice of Hearing | BCPC Form 805R | 6.8, 7.10 |
| Subpoena in Civil Case | BCPC Form 804 | 7.3 |
| Notice to Respondent | BCPC Form 807 | 6.8 |
| Full Hearing / Continued Commitment Hearing Decision and Entry | BCPC Form 813R | 7.11, 9.8 |
| Dismissal Entry | BCPC Form 822 | 6.7, 7.11 |

CLEAR FORM

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged To Be Mentally Retarded

**CASE NO.** _____

## MR/DD AFFIDAVIT FOR INVOLUNTARY COMMITMENT

[R.C. 5123.71(A)(1)]

The state of Ohio, Butler County, Court of Common Pleas, Probate Division _____

the undersigned, residing at _____

says that _____ has information or has actual knowledge that _____

is a mentally retarded person subject to institutionalization by court order; that this person has had a legal

settlement in _____ County, Ohio and resides at _____.

This allegation is based on one of the following:

_____ is a person who is at least moderately mentally retarded and, because of his/her retardation represents a very substantial risk of physical impairment of injury to himself/herself as manifested by evidence that he/she is unable to provide for and is not providing for his/her most basic physical needs and that provision for such needs is not available in the community. R.C. 5123.01 (P) (1); OR

_____ is at least moderately mentally retarded and, because of his/her mental retardation, needs and is susceptible to significant habilitation in an institution. R.C. 5123.01 (P) (2)

In addition, affiant provides the following statement of the factual ground for the belief that the person is subject to institutionalization by court order.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Attached hereto is a comprehensive evaluation report including a statement by the evaluation team that they have performed a comprehensive examination of the person and that they believe that the person is a mentally retarded person subject to institutionalization by court order. In the alternative, a written and sworn statement that the person himself/herself or that the guardian of a minor or adjudicated incompetent person has refused to allow a comprehensive evaluation is attached hereto.

CASE NO. _____

The name and address of the respondent's legal guardian, If known, is:

_____

The name and address of the respondent's spouse, If known, is:

_____

The name and address of the respondent's counsel, If known, is:

_____

Date this _____ day of _____ A.D. _____

Signature of affiant: _____

Sworn to before me and signed in my presence
on the day and year above dated.

_____
Judge/Magistrate

_____
Deputy Clerk/Notary Public

**COUNTY BOARD OF MR/DD**
**CIVIL COMMITMENT ASSESSMENT FORM**

## DEFINITIONS

**Emergency:** Health and safety conditions that pose a serious risk of immediate harm or death to the individual or others OR changes in the emotional or physical condition of an individual that necessitates substantial accommodation that cannot reasonably be provided by the individual's existing caretaker, if either situation would result in a risk of substantial harm to the individual or others if action is not taken in thirty days (5123.711 A).

**Priority:** A situation creating a risk of substantial harm to an individual or others, but for which action within thirty days is not necessary (5123.711B).

**Comprehensive evaluation:** A study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a group of persons with special training and experience in the diagnosis and management of mentally retarded or developmentally disabled persons, which group shall include individuals who are professionally qualified in the fields of medicine, education, psychology, and social work, together with such other specialists as the individual case may require (5123.01 C).

## TIMELINES

The County Board Civil Commitment Assessment Report must be completed within 30 days of the date of the request and sent to the person requesting the report via certified mail.

The county board must notify the appropriate developmental center of the request for an assessment within three business days of the date of the request.

**COUNTY BOARD OF MR/DD**
**CIVIL COMMITMENT ASSESSMENT FORM**
**The Ohio Department of Mental Retardation and Developmental Disabilities**
**Kenneth W. Ritchey, Director**

**INSTRUCTIONS: Type or print the following information. Attach the information identified in Sections A, B, C, and D to the form. Label each attachment by section. Send the completed form with attachments via certified mail to the person who requested the assessment.**

Name_____
Level of Mental Retardation: Profound____Severe____Moderate____Mild____
Age (must be 18 years or older)_____
Previous resident of a developmental center? Yes___ No___
Type of guardian: Self___ Family Member ___ Other_____

Date civil commitment assessment report requested _____

Assessment requested by Parent___Guardian___Service Provider___County Board___ODMR/DD____

30 day discharge notice issued to resident (OAC 5123-3-05) Yes___ No___ Date issued _____

Date County Board notified ODMR/DD developmental center of request for civil commitment assessment report_____

**Section A. Current Needs and Plan for Services**

The County Board is to conduct an assessment report on the client within 30 days of the request.

For clients currently being served through the MR/DD service delivery system attach a psychological evaluation indicating level of mental retardation and IQ; an Individual Services Plan or Individual Education Plan; the most recent assessments for psychiatry, health care, therapies (physical, occupational and speech) and other applicable assessments; and client progress notes for the 12 months preceding the date the affidavit is to be filed.

For individuals being probated from placements external to the MR/DD system, submit the comprehensive evaluation of the client that includes a psychological evaluation indicating level of mental retardation and IQ, the current residential setting of the client, and descriptors of the current services and needs of the client.

**Section B. Review of Residential Options**

A review of residential options indicates there are no other options available to the individual. Yes___ No___ Describe the options that were reviewed. Explain why committing the individual to a developmental center is the best option.

**Section C. Case Status**

This case should be considered: an Emergency___ a Priority ___ Neither ___ Attach explanation of the case.

**Section D. Client Resources**

Describe the specific resources available to the individual including capable service providers, special ancillary services, and funding to pay for the services necessary.

Signature _____ _____
Superintendent, County Board of MR/DD Date

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____
Alleged To Be Mentally Retarded

**CASE NO.** _____

## TEMPORARY ORDER OF DETENTION

[R.C. §5123.74(A)(1)]

**TO: SHERIFF OF BUTLER COUNTY**

Whereas, _____ who resides at _____ _____ has filed in the Court of Common Pleas, Probate Division of said County, an affidavit alleging that _____ residing at _____ is a mentally retarded person subject to institutionalization by court order and that emergency institutionalization is required.

YOU ARE THEREFORE, authorized to apprehend said person forthwith and take him or her to _____ in the least conspicuous manner. Respondent and his attorney are each entitled to a copy of this order.

### RESPONDENT'S RIGHT TO REQUEST A PROBABLE CAUSE HEARING

On request of the Respondent, the Respondent's counsel or Respondent's guardian, the Respondent shall be afforded a hearing to determine whether there is probable cause to believe that Respondent is a mentally retarded person subject to institutionalization by court order. Such hearing shall be held within two (2) court days of the request. On motion of the Respondent or his counsel and for good cause shown, the court may order a continuance of the hearing. Failure to conduct this hearing shall effect an immediate discharge of Respondent. Until a probable cause hearing is held, Respondent may be evaluated and habilitated. If no probable cause hearing is requested, then he/she may be evaluated and shall be provided with habilitation services until the first hearing is held pursuant to Section 5123.76 of the Revised Code.

### RESPONDENT'S RIGHT TO A LAWYER AND INDEPENDENT EXPERT EVALUATION

Respondent may retain counsel and have an independent expert evaluation. If Respondent is unable to afford a lawyer, he/she has the right to be represented by court-appointed counsel and to have an independent expert evaluation at court expense pursuant to R.C.§5123.76.

### NOTICE TO PERSON IN CHARGE OF INSTITUTION OR FACILITY

You are hereby informed of your responsibility, pursuant to R.C. §5123.77(B), to notify the respondent's legal guardian, spouse or next of kin, and counsel of the respondent's temporary detention in your institution of facility.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Court at Hamilton, Ohio this _____ day of _____ , _____ .

_____
Judge/Magistrate

_____ ,20 ___

Received this day, from the above named _____

_____
(signature from receiving facility)

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

**CASE NO.** _____

## Entry Granting Motion for Continuance

On _____, this cause came on for hearing concerning the

_____.

Attorney for Respondent _____

Attorney for Board/State _____

Independent Expert _____

Treating Physician _____

Witnesses _____

Parties Not Testifying _____

Case to be continued in progress **with all prior orders regarding above motion remaining in effect until**:

_____

For the following reasons:

_____

_____

_____

_____

_____
Judge / Magistrate

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged To Be Mentally Retarded

**CASE NO.** _____

## RIGHTS OF AN INVOLUNTARILY DETAINED PERSON

1. An interim order of placement pursuant to O.R.C. 5123.75(F) or a temporary order of detention pursuant to O.R.C. 5123.74(A) has been issued by the Butler County Probate Court. This is not a criminal arrest.

2. You have the Right To:

   a. Immediately make a REASONABLE NUMBER of telephone calls or use other reasonable means to contact an attorney, a physician, or both or to contact any other person or persons to secure representation by counsel, or to obtain medical assistance, and be provided assistance in making calls if such assistance is needed and requested;

   b. RETAIN COUNSEL of your choice and have an independent expert evaluation and if you are unable to afford an attorney, be represented by Court appointed counsel and have independent expert evaluation at court expense if you are unable to afford an evaluation;

   c. AND HAVE AND ATTEND A HEARING within two Court days from the day you make the request for a hearing to determine whether there is probable cause to believe that you are a mentally retarded person subject to institutionalization by Court order.

## REPORT OF PRESENTATION OF RIGHTS

On the _____ day of _____ , _____ , I read and served a copy of RIGHTS OF AN

INVOLUNTARILY DETAINED PERSON TO _____.

_____

Deputy Sheriff

Clear Form

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged To Be Mentally Retarded

**CASE NO.** _____

## ENTRY DETERMINING PROBABLE CAUSE AND ORDERING A COMPREHENSIVE EVALUATION AND INTERIM ORDER OF PLACEMENT

This matter came on for a probable cause hearing on _____, on the affidavit alleging _____ to be a mentally retarded person subject to institutionalization by court order and a Motion for Probable Cause Hearing filed on behalf of the Respondent on _____, at which time the court conducted a hearing pursuant to Section 5123.75 of the Ohio Revised Code and heard evidence on the motion. The Court finds that lawful notice of the time and place of this hearing had been given to all parties in interest, or that notice has been duly waived.

The Court further finds on the evidence that probable cause has been shown that _____ is a mentally retarded person subject to institutionalization by court order and therefore, is ordered detained at , pursuant to the provisions of Section 5123.75 of the Ohio Revised Code, until the date of the full hearing.

It is further ordered that a full hearing pursuant to Section 5123.76 of the Ohio Revised Code shall be held on _____ **at** _____ **.** It is further ordered that the Butler County Board of Mental Retardation and Developmental Disabilities cause a comprehensive evaluation of _____ to be performed, pursuant to Sections 5123.71 (A)(2) of the Ohio Revised Code and submit reports of such evaluations to the court on or before _____.

_____

Probate Judge/Magistrate

_____

Deputy Clerk

If the Decision is of a Magistrate, a party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Civ. R. 53 (E)(3).

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged to be Mentally Retarded

**CASE NO.** _____

## NOTICE OF HEARING

TO THE FOLLOWING PERSONS:

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This matter is set for hearing before this Court on the _____ day of _____ , _____

at _____ _____.M. at

Witness my signature and the seal of said Court, this

_____ day of _____ , _____ .

THIS NOTICE MAILED REGULAR
MAIL THIS DATE.

_____

Judge/Magistrate

By: _____

Deputy Clerk

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged to be Mentally Retarded

**CASE NO.** _____

## SUBPOENA IN CIVIL CASE

| To: | Residence | Miles | Day Served |
|---|---|---|---|
| | | | |

You are hereby required to be and appear before the Court of Common Pleas, Probate Division at the _____ in said County, on the _____ day of _____ , _____ , at _____ o'clock ____.M., to testify as a witness in a certain case pending in said Court, wherein _____ is Alleged to be Mentally Retarded and not depart the Court without leave.

Said Court requires your said attendance on behalf of the respondent, _____ _____.

Witness my hand the seal of said Probate Court

Court, this _____ day of _____

JOHN M. HOLCOMB
Probate Judge and Ex-Officio Clerk

By _____
Deputy Clerk

RULES OF CIVIL PROCEDURE
RULE 45. Subpoena

(C) **Protection of persons subject to subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2Xa) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(b) Subject to division (DX2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to inspection and copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) fails to allow reasonable time to comply;

(b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies.

(c) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party;

(d) subjects a person to undue burden.

(4) Before filing a motion pursuant to division (Cx3xd) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (Cx3xd) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) In cases under division (Cx3xc) or (Cx3xd) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) **Duties in responding to a subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CIVIL RULE 45(f) SANCTIONS

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena was issued. A subpoenaed person or that person's attorney frivolously resisting discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of this duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earning and reasonable attorney's fees.

Clear Form

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____
Alleged to be Mentally Retarded

**CASE NO.** _____

## NOTICE TO RESPONDENT

To: _____

_____

_____

_____

You are hereby notified that on the _____ day of _____, _____, _____
residing at _____
filed in this Court and affidavit alleging you are a mentally retarded subject to hospitalization/treatment
by Court order. This affidavit will be for hearing before this Court at:

Place: _____

Date: _____ Time: _____

You may retain counsel and have independent expert evaluation. If you are unable to obtain an attorney, you shall be represented by Court appointed counsel and may have independent expert evaluation at state expense.

_____ has been appointed to represent you at this hearing.

Phone: _____ Address: _____

Witness my signature and the seal of said Court this

this _____ day of _____, _____

_____
Judge/Magistrate

_____
Deputy Clerk

Clear Form

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____
Alleged To Be Mentally Retarded

**CASE NO.** _____

On _____ , this cause came on for a

_____ ,

a resident of Butler County, Ohio, is hereby ordered to be committed to the:

pursuant to Section 5123.76 of the Revised Code of Ohio. This commitment represents the least restrictive alternative available and consistent with the habilitation goals of the Respondent.

The court finds, based on clear and convincing evidence, that the Respondent is a person eighteen years of age or older who is at least moderately mentally retarded and because of the Respondent's retardation:

☐ 1) represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the Respondent is unable to provide for and is not providing for the Respondent's most basic physical needs and that provision for those needs is not available in the community R.C. §5123.01(P)(1); or

☐ 2) needs and is susceptible to significant habilitation in an institution R.C. §5123.01(P)(2).

The duration of this order is not to exceed
Subsequent periods of commitment may be ordered by this Court if the assistant attorney general or the superintendent of the developmental center where the respondent resides files an application for continued commitment at least ten (10) days prior to the expiration of this order.

A mandatory hearing shall be held at least every two years as required by R.C. §5123.76 (H)(4). No person committed under 5123.01(P)(2) shall be held for more than five years R.C. §5213.76(I).

Nothing in this order shall be construed as a judgment on the legal competency of Respondent nor shall any civil rights not specifically denied him/her under this order or any chapter of the Revised Code be automatically curtailed as a consequence of this order.

This order expires on the day which is _____ . The next hearing is scheduled for _____ .

_____
**Judge/Magistrate**

If the decision is of a Magistrate, a party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by Civ. R. 53 (E)(3).

# PROBATE COURT OF BUTLER COUNTY, OHIO

**IN THE MATTER OF** _____

Alleged To Be Mentally Retarded

**CASE NO.** _____

## DISMISSAL ENTRY

The Court finds, on the evidence, that the above named respondent is not a mentally retarded person subject to institutionalization by Court order.

Therefore it is ordered that the case be dismissed.

_____

Judge/Magistrate

_____

Deputy Clerk